

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 IO-14 EB-08 COME-00 AF-10
ARA-14 EA-12 NEA-10 CIAE-00 INR-10 NSAE-00 PA-02
USIE-00 SSO-00 INRE-00 DOTE-00 TRSE-00 OIC-02 H-02
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-----104387 231626Z /53

O 231520Z MAR 78
FM AMCONSUL HAMBURG
TO SECSTATE WASHDC IMMEDIATE 4660

UNCLAS SECTION 1 OF 2 HAMBURG 448

PASS: KEARNEY, BANK, STATE; JOHNSON, MARAD; JACKLIN,
TREASURY; KUTSKE, DRISCOLL, SHEFLER, DOT; FREE,
COMMERCE

E.O. 11652: N/A
TAGS: OCON, OTRA, AFIN, UNCITRAL, GW
SUBJECT: UNCITRAL - CONFERENCE ON CARRIAGE OF GOODS BY SEA, HAMBURG

SUMMARY: REPORT FOR WEEK OF MARCH 20-24, 1978;
ONGOING DISCUSSIONS AND BARGAINING POSITIONS.

1. IN VIEW OF FACT CONSULATE TO BE CLOSED FRIDAY THROUGH
MONDAY FOR GERMAN HOLIDAYS, REPORT OF THIRD WEEK BEING
SUBMITTED EARLY.

2. WEEK BEGAN WITH UNUSUAL SQUEEZE PLAY BY BRITISH AND
DUTCH TO REDUCE U.S. VOICE IN CONFERENCE. CHAIRMAN
SHAFIK ANNOUNCED HE WOULD CONVENE FORMAL AD HOC CONSUL-
TATIVE COMMITTEE IN VIEW OF DEMANDS OF GROUP F 77 FOR
ASSURED VOICE IN CHAIRMAN'S CONSULTATIONS. FORMULA
CHOSEN WAS 7, GROUP OF 77; 3, GROUP D; AND 4, GROUP B.
GROUP OF 77 AFTER MUCH WRANGLING SELECTED ARGENTINA,
ECUADOR, MEXICO, GHANA, UGANDA, PHILIPPINES AND INDIA.
GROUP D SELECTED USSR, CZECHOSLOVAKIA AND POLAND. NO
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GROUP B MEETING HELD, BUT BRITISH-DUTCH ANNOUNCED THAT
AN INFORMAL GROUP OF 10 SHIPOWNING NATIONS HAD SELECTED
THEM TO BE SPOKESMEN AT A MEETING TO WHICH U.S. NOT
INVITED. GROUP CONSISTED OF JAPAN, GREECE, NETHERLANDS,
BELGIUM, U.(., F.R.G., ITALY, PORTUGAL, IRELAND AND
TURKEY. BRITISH-DUTCH THEN ANNOUNCED SCANDIVAVIANS
WOULD ALSO HAVE ONE SEAT, LEAVING ONE SEAT TO BE DE-

CIDED AMONG U.S., AUSTRALIA, CANADA, AND FRANCE. DUTCH SAID THIS "GROUP" SHOULD NOW SELECT ITS REPRESENTATIVE. CANADA IMMEDIATELY AGREED U.S. COULD SPEAK FOR IT, BUT AUSTRALIA INSISTED ON VOICE AND FRANCE AGREED AUSTRALIA COULD SPEAK FOR IT FOR FEAR THAT U.S. POSITIONS AT MEETING WOULD BE TOO STRONG. U.S. SAID AUSTRALIA HAD ALREADY GIVEN IN ON TWO MOST IMPORTANT ISSUES TO BE DECIDED AT CONSULTING GROUP (ART. 8) AND AMOUNT OF SDR'S (NO MORE THAN 2). U.S. FELT AUSTRALIA HAD NO NEGOTIATING ROOM WITH SUCH ANNOUNCED POSITIONS AND DEMANDED INCREASE IN SIZE OF GROUP TO INCLUDE AT LEAST SIX GROUP B COUNTRIES AND THEREFORE NINE GROUP OF 77, SINCE GROUP D DID NOT INSIST ON GREATER VOICE. GROUP 77 FELT IT WOULD BE IMPOSSIBLE TO CHOOSE TWO MORE VOICES FROM THAT GROUP WITHOUT EXCESSIVE DISCUSSIONS WHICH MIGHT BE PROLONGED. U.S. HELD FIRM AND EVENTUALLY AUSTRALIA AND FRANCE AGREED U.S. COULD SPEAK FOR THEM AT CHAIRMAN'S CONSULTATIVE GROUP, WHICH THEN PROCEEDED ON 7-4-3 BASIS.

3. BARGAINING AT CHAIRMAN'S GROUP BEGUN BY PRESENTATION OF FIVE POSITION PAPERS SOLICITED BY CHAIRMAN.

4. MEXICO-ECUADOR PAPER INSISTED ON UNCHANGED UNCITRAL TEXT WITH DELETION OF SPECIAL FIRE DEFENSE, NO NAUTICAL FAULT, AND EXISTING ARTICLE 8 WITH LIMIT IN VICINITY
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OF 2-3 SDR PER KILO.

5. U.S. PAPER INSISTED ON NO NAUTICAL FAULT OR SPECIAL FIRE RULE AND WOULD HAVE 2 SDR IF ARTICLE 8 LIMITS BREAKABLE, 2.5 SDR TO 3.5 SDR FOR UNCITRAL TEXT OF ARTICLE 8, AND 5 TO 5.5 SDR IF ARTICLE 8 LIMITS UNBREAKABLE AS PER ATHENS-LONDON FORMULA BECAUSE UNBREAKABLE LIMITS MUST RESULT IN COVERAGE OF 85 TO 90 PERCENT VALUE OF U.S. CARGOES.

6. U.K.-NETHERLANDS PAPER STONE-WALLED ALL ISSUES: REINTRODUCE NAUTICAL FAULT, UNCITRAL FIRE DEFENSE, 2 SDR PER KILO LIMIT, AND ATHENS-LONDON FORMULA ON ART 8.

7. USSR PAPER APPROVED EXISTING ARTICLE 8 TEXT BUT DEMANDED NAUTICAL FAULT REINTRODUCTION AND COULD ACCEPT 2.5 TO 3 SDR PER KILO.

8. NORWAY PROPOSED TO RETAIN EXISTING UNCITRAL TEXT ON ARTICLE 5 (NO NAUTICAL FAULT), SOME LESS UNBREAKABLE FORM OF ATHENS-LONDON FORMULA, AND LIMIT SET AT ABOUT

3 SDR PER KILO. NORWAY NOTED THAT BASED UPON ITS 1974 VISBY LEGISLATION, CURRENT HAGUE-VISBY LIMIT IN HIS COUNTRY ABOUT 3 SDR AND THEY WOULD FIND IT IMPOSSIBLE TO REDUCE AMOUNT.

9. CHAIRMAN SHAFIK BEGAN TO SEEK AGREEMENT ON AREAS OF LEAST DISAGREEMENT AFTER U.S. PRESENTED VISUAL PICTURE OF ALL POSITIONS. CHAIRMAN PROPOSED AGREEMENT ON 2.5 TO 3 SDR AND A MODIFIED FIRE PROPOSAL WHEREBY CARGO CLAIMANT MUST PROVE ORIGIN OF FIRE DUE TO CARRIER NEGLIGENCE BUT CARRIER MUST PROVE SPREAD OF FIRE NOT DUE TO CARRIER NEGLIGENCE. BRITISH-DUTCH INTRANSIGENCE EMERGED HOWEVER WITH ANNOUNCEMENT THEY COULD AGREE TO NO PACKAGE DEAL WITHOUT RETURN OF NAUTICAL FAULT. USSR
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ANXIOUS TO BARGAIN FOR A DEAL, HOWEVER, AND NORWAY STATED ITS MOST IMPORTANT GOAL TO BE INTERNATIONAL UNIFORMITY REGARDLESS OF CONTENTS OF PACKAGE.

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 IO-14 EB-08 COME-00 AF-10
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USIE-00 SSO-00 INRE-00 DOTE-00 TRSE-00 OIC-02 H-02
/100 W

-----104531 231625Z /53

O 231520Z MAR 78
FM AMCONSUL HAMBURG
TO SECSTATE WASHDC IMMEDIATE 4661

UNCLAS SECTION 2 OF 2 HAMBURG 448

PASS: KEARNEY, BANK, STATE; JOHNSON, MARAD; JACKLIN,
TREASURY; KUTSKE, DRISCOLL, SHEFLER, DOT; FREE,
COMMERCE

10. EFFORTS CONTINUING TODAY AT 3 HOUR BARGAINING SESSION. FURTHER SESSIONS SCHEDULED FOR FRIDAY AND

SATURDAY.

1. AT COMMITTEE ONE, DISCUSSIONS PROCEEDED ON ARTICLES 12 THROUGH 18 OF UNCITRAL TEXT. MANY PROPOSALS WERE SUBMITTED ON THESE ARTICLES, MOST OF WHICH WERE REJECTED, AND IN GENERAL THE UNCITRAL DRAFT WAS ACCEPTED. IT WAS INTERESTING TO NOTE THAT IN SOME INSTANCES CANADA VOTED WITH THE DEVELOPING STATES.

12. COMMITTEE TWO IS CURRENTLY CONSIDERING DRAFT PROVISIONS PREPARED BY THE SECRETARY-GENERAL CONCERNING IMPLEMENTATION, ENTRY INTO FORCE, AND OTHER FINAL CLAUSES FOR THE DRAFT CONVENTION. THE PROVISIONS DEALING WITH "ENTRY INTO FORCE" AND "MULTI-MODAL TRANSPORT" (SEE: A/CONF/89/6, 22 AUGUST, 77) HAVE CONSUMED MOST OF THE WORKING TIME OF THE COMMITTEE.

13. WITH RESPECT TO ENTRY INTO FORCE, MANY DELEGATIONS
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(T.E. 17) SHOWED STRONG SUPPORT FOR THE INDIA, BANGLADESH, AND UGANDA PROPOSAL WHICH PROVIDED FOR "ENTRY" AFTER THE DEPOSIT OF THE TWENTIETH INSTRUMENT OF RATIFICATION, WITHOUT FURTHER CONDITIONS (I.E. TONNAGE, PERCENT OF TRADE.)

14. WHILE SEVERAL DELEGATIONS HAVE SUPPORTED A MIXED FORMULA FOR ENTRY INTO FORCE (U.S., JAPAN, FRANCE, GREECE, U.K., CANADA, F.R.G.), THEY HAVE NOT YET FORMED A UNIFIED POSITION. FURTHER DISCUSSION HAS BEEN DELAYED PENDING FURTHER DEVELOPMENTS IN THE SPECIAL CONSULTATIVE COMMITTEE (I.E. "PACKAGE OF LIABILITY" ARTICLES).

15. THE SECOND PART OF THE ENTRY INTO FORCE PROVISION DEALT WITH THE DENUNCIATION OF BRUSSELS CONVENTION OF 1924 AND 1968 PROTOCOL. THE COMMITTEE, AFTER EXTENDED DEBATE, ACCEPTED ALTERNATIVE Y. THE U.S. SUPPORTED THE CONSENT.

16. WITH RESPECT TO MULTIMODAL TRANSPORT: SEVERAL COUNTRIES, PRINCIPALLY EUROPEANS, EXPRESSED SERIOUS NEED FOR AN ARTICLE BY WHICH ACCESSION TO HAMBURG CONVENTION WOULD NOT BE INCONSISTENT WITH PARTICIPATION IN EXISTING UNI-MODAL CONVENTIONS WHICH HAVE INCIDENTAL APPLICATION TO SEA TRANSPORT, E.G., CIM. UNHAPPILY, SOME OF THE DRAFT PROPOSALS ALSO ATTEMPTED TO ANTICIPATE THE FUTURE MULTIMODAL CONVENTION BEING PREPARED IN UNCTAD. GROUP 77 RESPONDED BY PROPOSING NO ARTICLE AT ALL, SINCE THEY DID NOT WANT A PROVISION WHICH MIGHT

PREJUDICE THE UNCTAD WORK.

17. AFTER LONG AND CONFUSING DEBATE, COMMITTEE AGREED
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TO AN ARTICLE WHICH WOULD BE DIRECTED ONLY TO EXISTING
UNI-MODAL CONVENTIONS DONE BY U.N. OR REGIONAL GROUPS.
A TEN-MEMBER WORKING GROUP (INDIA, CUBA, ECUADOR,
GHANA, THAILAND, U.K., FRANCE, NETHERLANDS, G.D.R.,
AND CZECHOSLOVAKIA) WAS ESTABLISHED TO DRAFT AN ARTICLE
AND BRING IT BACK TO COMMITTEE TWO ON FRIDAY, 24 MARCH.
PETERS

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